

EUROPEAN CENTER FOR CONSTITUTIONAL AND HUMAN RIGHTS



Slovenia's Paper Pushbacks: Hasty Readmissions to Croatia Denying Critical Procedural Safeguards

Starting in June 2018¹ and through late 2021, irregular crossings of people on the move from Croatia into Slovenia culminated in summary expulsions implemented via a Readmission Agreement² that the two countries had reactivated alongside heavily criticised policies and laws seeking to limit access to protection in Slovenia.³ This factsheet first provides an introduction to the Readmission Agreement and its shortcomings (Section I), then discusses how its implementation in practice led to the expulsion of thousands of people on the move to Croatia while denying them access to the asylum procedure (Section II), and finally discusses the findings of Slovenian institutions, including its Supreme Court, about its illegality (Section III).

I. Framework of the Readmission Agreement

The Readmission Agreement (“Agreement”) between Slovenia and Croatia provides that persons apprehended in Slovenia who do not fulfil entry conditions shall be readmitted to Croatia “**without any formalities**” via a “**summary procedure**” in which Slovenia submits a readmission request within 72 hours of the irregular crossing.⁴ According to the Agreement, the request for readmission shall be made “orally or by telephone,” although a “record of readmission” is to be drawn up.⁵

¹ AI, *Slovenia: Push-Backs And Denial Of Access To Asylum*, 06.2018, <https://www.amnesty.si/media/uploads/files/Slovenia%20-%20Push-backs%20and%20denial%20of%20access%20to%20asylum,%20Amnesty%20International.pdf>; Dnevnik, “Ali v Sloveniji res ni več mogoče zaprositi za azil? Kaj naj storimo zdaj?” 14.06.2018, <https://www.dnevnik.si/1042825662>; AIDA, “Country report: Slovenia – 2018 update,” 03.2019, https://asylumineurope.org/wp-content/uploads/2019/03/report-download_aida_si_2018update.pdf, p.17.

² Agreement between the Government of the Republic of Slovenia and the Government of the Republic of Croatia on the readmission of persons whose entry or residence is illegal, 07.03.2006, published in the official journal “Uradni list Republike Slovenije – Mednarodne pogodbe” on 30.03.2006.

³ UN HRC, Concluding observations on Slovenia, CCPR/C/SVN/CO/3, 21.04.2016, §§15-20; HR Commissioner, “Letter to the President of the National Assembly of the Republic of Slovenia,” 12.01.2017; HR Commissioner, “Slovenia: More should be done to ensure that Roma, migrants and those in poverty are not left behind,” 23.03.2017; CPT, Report on the visit to Slovenia carried out from 28 March to 4 April 2017, 20.09.2017, <https://rm.coe.int/pdf/168074adf9,§§94-95>; UN Human Rights Council, “Compilation on Slovenia,” 30.08.2019, <https://digitallibrary.un.org/record/3830617?ln=en,§64>. The Slovenian Constitutional Court found these changes unlawful for violating *non-refoulement*. See Decision U-I-59/17, 18.09.2019; AIDA, “Country report: Slovenia – 2019 update,” 03.2020, https://asylumineurope.org/wp-content/uploads/2020/03/report-download_aida_si_2019update.pdf, p.12, 17.

⁴ Arts. 2 (1) and (3) of the Readmission Agreement.

⁵ *Id.*, Arts. 2(4)

While the Agreement specifies that readmission is not possible when a person has already been granted refugee status or initiated an asylum procedure in Slovenia,⁶ it is silent about situations where an individual has requested asylum but has not yet been able to officially register their claim—or when the person is a (suspected) unaccompanied minor.⁷

As a result, even **on paper**, the Agreement’s articulated safeguards **fall short of Slovenia’s legal obligations**⁸ to facilitate access to asylum following the oral expression of a claim⁹ and to not deport those who have expressed a claim.¹⁰ Protections specifically delineated for unaccompanied minors in Slovenian legislation include the appointment of a representative, the application of the child’s best interests, and a child-sensitive procedure conducted by trained officers.¹¹ Slovenia’s Foreigners’ Act mandates that upon the apprehension of an unaccompanied minor “irregularly” present in Slovenia, “the police shall immediately inform the social work centre” for the appointment of a guardian. The deportation of an unaccompanied minor must comply with the Convention on the Rights of the Child (“CRC”) after a thorough examination of their circumstances, the issuance of a return decision, and arrangements for the minor to be returned to family, a selected guardian, or an adequate reception centre.¹² However, as drawn out below, the Agreement’s lack of clarity enabled the summary expulsion of thousands of individuals before they were granted access to the asylum procedure in Slovenia, and without consideration of the circumstances in Croatia to which they would be returned.¹³

II. The Readmission Agreement in Practice

Overall shortcomings in Slovenia’s treatment of people on the move, whereby the above protections were not thoroughly applied, had already laid the groundwork for further violations in the context of the Agreement.

For example, the **lack of access to adequate interpretation** for foreigners is a long-standing issue in Slovenia,¹⁴ especially at the border. **Obstacles to legal representation** rose after the April 2020 closure of the only fund ensuring free advice for the initial stages of an asylum claim.¹⁵ The Ombudsperson reported an absence of adequate leaflets and brochures **informing persons of their rights and asylum procedures**.¹⁶ In addition, concerns about the proper **identification and**

⁶ *Id.*, Arts. 3 (d) and (e).

⁷ See Slovenian Ombudsperson, “National Preventive Mechanism Report for 2019,” <https://www.ohchr.org/sites/default/files/Documents/HRBodies/OPCAT/NPM/NPM-Slovenia-2019.pdf>, p.54 for unaccompanied minors.

⁸ AI, *Slovenia: Push-Backs And Denial Of Access To Asylum*, p.15.

⁹ IPA transposes the EU Asylum Procedures Directive as per art. 1(2) IPA. The facilitation obligation applies from the expression of intention to claim asylum (Art. 2(10) IPA) and entails that the relevant state agent provides a translator and register the asylum claim (Art. 42 IPA).

¹⁰ IPA, Art. 36; AI, *Slovenia: Push-Backs and Denial of Access to Asylum*, p.14.

¹¹ *Id.*, Arts. 12 to 19; Asylum Procedures Directive, Art. 25; AIDA, “Country report: Slovenia – 2018 update,” p.38.

¹² Foreigners’ Act, Art. 82; AIDA, “Country Report: Slovenia – 2018 update,” p.18.

¹³ See ECCHR, “Croatia’s Pushback Policy: A System of Unlawful, Covert, and Perpetuated Expulsions,” February 2023, https://www.ecchr.eu/fileadmin/user_upload/ECCHR_Croatia_factsheet_February_2023.pdf.

¹⁴ CPT, 2017 Slovenia visit report, §93; Slovenian Ombudsperson, “National Preventive Mechanism Report 2018,” <https://www.ohchr.org/sites/default/files/Documents/HRBodies/OPCAT/NPM/Slovenia2018.pdf>, p.43; AIDA, “Slovenia – 2020 update,” p.12.

¹⁵ AIDA, “Slovenia – 2021 update,” p.21.

¹⁶ Slovenian Ombudsperson, “National Preventive Mechanism Report 2018,” p.43; Slovenian Ombudsperson, “NPM Report 2019,” pp.49-50.

protection of unaccompanied minors were long-standing,¹⁷ with the UN Human Rights Committee (“HRC”) in 2016 raising the need for “a uniform and formal mechanism to identify persons in vulnerable situations in the migration flow, including unaccompanied minors.”¹⁸ In 2017, the Council of Europe’s Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment (“CPT”) criticized Slovenia’s **inadequate guardianship** for detained unaccompanied minors,¹⁹ a critical safeguard for any of the above-mentioned processes to function effectively.²⁰ In 2019, the UN’s Committee on the Elimination of Racial Discrimination (“CERD”) and UNHCR echoed concerns about the **lack of formal best interest consideration mechanisms**, an ineffective guardianship system, and the non-application of benefit-of-the-doubt standards in identification.²¹ The Slovenian Ombudsperson also confirmed a drastic lack of age-assessment procedures.²²

Against the backdrop of these deficiencies, returns under the Readmission Agreement was implemented with **complete disregard of applicable legal frameworks**.²³ Pushbacks from Slovenia under the Agreement were characterised by:

- a denial of access to asylum;²⁴
- disregard of children’s best interests;²⁵
- unwillingness to identify and protect unaccompanied minors;²⁶
- withholding of information about the purpose of detention and individuals’ imminent expulsion;²⁷
- misleading detainees to believe they would be transported to a reception centre to register asylum claims;²⁸
- inadequate or even hostile interpreters;²⁹

¹⁷ UN CERD, Concluding observations on Slovenia (CERD/C/SVN/CO-8-11), 11.01.2016, p.5.

¹⁸ UN HRC, Concluding observations on the third periodic report of Slovenia (CCPR/C/SVN/CO/3), 21.04.2016, §20.

¹⁹ CPT, 2017 Slovenia visit report, §96.

²⁰ The CPT stated that unaccompanied minors should not be detained but “provided with special care and accommodated in an open (or semi-open) establishment specialised for juveniles.” Despite a 2016 decision that they should not be detained but adequately accommodated, official data confirms that their detention continued. See CPT, 2017 Slovenia visit report, §89; UN Human Rights Council, “Summary of Stakeholders’ submissions on Slovenia: Report of the UN OHCHR,” 14.08.2019, §72.

²¹ UN HR Council, “Compilation on Slovenia,” 20.08.2019, §§67-68.

²² Slovenian Ombudsperson, “Annual Report for 2019,”

https://www.theioi.org/downloads/870qi/Slovenian_OM_Annual%20Report_2019_EN.pdf, p.133, which records only 3 expert opinions issued on this matter from 2012 to 2017.

²³ AI, *Slovenia: Slovenia: Push-Backs And Denial Of Access To Asylum*, p.7; AIDA, “Country report: Slovenia – 2021 update,” pp.24-25.

²⁴ AI, *Slovenia: Slovenia: Push-Backs And Denial Of Access To Asylum*, pp.9-13; AIDA, “Slovenia 2018 update,” pp.17-8; AIDA, “2020 update,” p.20; Slovenian Ombudsperson, “Annual Report for 2020,” https://www.ohchr.org/sites/default/files/2021-12/SlovenianOmbudsman2020_2.pdf, pp.142-144.

²⁵ AI, *Slovenia: Push-Backs And Denial Of Access To Asylum*, pp.5, 10.

²⁶ *Id.*, p.10.

²⁷ *Id.*, pp.5, 7, 11; AIDA, “Country report: Slovenia – 2018 update,” pp.17-8

²⁸ AI, *Slovenia: Push-Backs And Denial Of Access To Asylum*, p.5; AIDA, “Slovenia – 2018 update,” pp.17-18; AIDA, “Slovenia – 2020 update,” p.20.

²⁹ AI, *Slovenia: Push-Backs And Denial Of Access To Asylum*, pp.5, 7, 11, 13.

- forced signatures of documents in Slovenian, with no explanation of their content;³⁰ denial of legal representation;³¹ and
- the resulting impossibility for people on the move to challenge expulsions to Croatia before their execution.³²

The Agreement as such was widely **criticized for circumventing additional procedures and safeguards**, with the UN Human Rights Council highlighting the lack of guarantees for individualized assessments of individuals' protection needs.³³ The Slovenian Ombudsperson has observed **insufficient record-keeping**, with official notes at police stations on the handling of foreigners under this Agreement including only "scarce summaries" of their statements, lacking reasons for leaving their country of origin, and failing to record if information was provided on their returns and their rationale. The Ombudsperson concluded that the **records did not allow insight into the correctness and legality of their treatment**. Slovenian authorities confirmed that for groups travelling together collective notes may be made or none at all, justifying the absence of individual notes with what it described as "the objective circumstances of the procedure"³⁴—but again highlighting the Agreement's incompatibility with the legal frameworks for asylum and protection in the country. In 2020, Slovenian authorities confirmed that **only forms in Slovenian** were available for summary expulsions under the Agreement.³⁵ The Slovenian Ombudsperson stressed that the **non-issuance of a written** decision left no effective remedy available to those expelled under the Agreement³⁶ and noted recurrent **overcrowded conditions in detention** further to these expulsions.³⁷

The above patterns also applied during authorities' handling of **unaccompanied or separated children** ("UASC"),³⁸ for which key safeguards of identification and protection were ignored.³⁹ Although the Ombudsperson was informed in 2019 that expulsions under the Agreement should not include UASC,⁴⁰ Slovenian authorities argued the following year that its protocol on identification and protection of UASC did not include cases where the person had been apprehended further to an irregular crossing, such that the border police did not apply it and **summarily expelled UASC** without taking any protective steps such as the allocation of a guardian and adequate accommodation.⁴¹ In fact, many UASC expelled under the Agreement

³⁰ *Id.*, pp.5, 7.

³¹ Slovenian Ombudsperson, "Annual Report for 2020," pp.143-144.

³² AI, *Slovenia: Push-Backs And Denial Of Access To Asylum*, pp.14-15; AIDA, "Slovenia – 2020 update," p.19.

³³ UN HR Council, "Compilation on Slovenia," 20.08.2019, §65; see also Ombudsperson, "Annual Report for 2020," 06.2021, pp.140-141.

³⁴ Slovenian Ombudsperson, "National Preventive Mechanism Report for 2019," pp.49-51 and "National Preventive Mechanism Report for 2020," p.65.

³⁵ Slovenian Ombudsperson, "National Preventive Mechanism Report for 2020," p.69, where the form is designed under "the refusal document."

³⁶ Slovenian Ombudsperson, "Annual Report for 2020," pp.140-141.

³⁷ *Id.*, p.70.

³⁸ AI, *Slovenia: Push-Backs And Denial Of Access To Asylum*, pp.10-11; Slovenian Ombudsperson, "National Preventive Mechanism Report for 2019," p.53 and "National Preventive Mechanism Report for 2020," p.61.

³⁹ AIDA, "Country report: Slovenia – 2018 update," p.18.

⁴⁰ Slovenian Ombudsperson, "National Preventive Mechanism Report for 2019," p.53.

⁴¹ Slovenian Ombudsperson, "National Preventive Mechanism Report for 2020," pp.68-69.

reported being **falsely identified as adults**,⁴² in some cases under duress⁴³ or even violence,⁴⁴ including where they had documents proving their age.⁴⁵ In one documented case, a Slovenian officer admitted to a minor that he could not register them as such.⁴⁶

Official data records the **wide scope** of the Agreement's use during this period: capturing over 4,600 summary returns via the Agreement in 2018,⁴⁷ over 11,000 in 2019,⁴⁸ over 9,900 in 2020,⁴⁹ and over 3,800 in 2021.⁵⁰ The drastic increase in expulsions to Croatia, paired with a fall in registered asylum claims at borders following the Agreement's reactivation, reveals its utilization to deny access to asylum.⁵¹

III. Findings on the Use of the Agreement to Deny Access to Asylum and Associated Safeguards

Several state institutions have acknowledged the **unlawful nature** of Slovenia's treatment of people on the move subjected to its paper pushback policy.

When the Slovenian Ombudsperson confronted the Slovenian Ministry of Interior on denial of access to asylum and the need for police officers to record official notes on the interview “from which it is clear that the foreigner was informed of their right to apply for international protection,” the Ministry of Interior replied that “police officers lack the legal authorization or duties to inform each foreigner individually of the option to apply for international protection,” finding it sufficient to state only that officers treat those who do express their intention to apply as such.⁵² In fact, instructions to border police have revealed that the Agreement aimed precisely to “**prevent[] the exploitation of the asylum procedure**,”⁵³ undermining the officers' non-discretionary duty to register all expressed intentions to claim asylum under national and EU law.

That the use of the Agreement manifests in the denial of asylum has also been confirmed by the Slovenian judiciary. The Slovenian Administrative Court noted that in 2018 such internal instructions resulted—within only one month—in a drastic drop in the percentage of persons

⁴² Border Violence Monitoring Network (BVMN), “One of the police officers was FaceTiming a woman and smiling,” 25.07.2019.

⁴³ BVMN, “They don't want to give us any evidence. That's why they take all our stuff, mobile, everything,” 07.10.2021.

⁴⁴ BVMN, “He was asked for his age and was slapped every time he gave the answer ‘16’”, 14.11.2020; BVMN, “They beat them so cleverly, [...] beat them on the chest, the belly, the private area; it will not show, the wound or injury, but the man will have so much pain, inside,” 06.11.2021; see also BVMN and The Left, “Black Book of Pushbacks: Expanded & updated edition, Slovenia, Volume I – pp.121-239,” pp.130-131.

⁴⁵ BVMN, “The Minor Was Forced to Sign Documents and Told by the Officer ‘You Were Born in 2000,’” 24.10.2019.

⁴⁶ BVMN, “After [the electric shock], I didn't see anything. I was like asleep...like dreaming,” 03.12.2018.

⁴⁷ AIDA, “Country report: Slovenia – 2019 update,” p.19.

⁴⁸ *Ibid.*

⁴⁹ AIDA, “Country report: Slovenia – 2020 update”, 03.2021, https://asylumineurope.org/wp-content/uploads/2021/03/AIDA-SI_2020update.pdf, p.12.

⁵⁰ AIDA, “Country report: Slovenia – 2021 update,” 03.2022, https://asylumineurope.org/wp-content/uploads/2022/05/AIDA-SI_2021update.pdf, p.25.

⁵¹ AI, *Push-Backs And Denial Of Access To Asylum*, p.12; AIDA, “Slovenia – 2018 update,” p.17

⁵² Slovenian Ombudsperson, “NPM 2020 report” (Annex 121.c to Author's original submission), p.65.

⁵³ AIDA, “Country report: Slovenia – 2019 update,” p.20.

apprehended following an unauthorized crossing who were registered as wishing to claim international protection in certain police stations: from 99.2.15% to 3%.⁵⁴

In 2021, the Slovenian Supreme Court upheld **conclusions on the several violations of EU law resulting from this implementation of the Readmission Agreement**. It found that the handover, shortly after his apprehension and presumably after an alleged unauthorized crossing, of an English-speaking Cameroonian citizen, violated the EU Charter for fundamental rights as to the right to asylum (article 18), the principle of non-refoulement (article 19(2)), and the prohibition of collective expulsion (article 19(2)).⁵⁵ Even though the complainant was a native English speaker, the Court found his access to an interpreter was essential for his understanding of his legal situation since the relied upon documents were in Slovenian.⁵⁶ The issue of **inadequate interpretation** was central to the Court's assessment of his lack of access to legal remedies and to international protection.⁵⁷

However, the Slovenian Ombudsperson reported later that year that Slovenian officers continued to be instructed to expel persons to Croatia under the Readmission Agreement, even if they had expressed their wish to claim international protection.⁵⁸ Slovenia's practice paired with these findings further reveal its use of the Readmission Agreement to carry out pushbacks under the guise of paperwork and by another name.

⁵⁴ Slovenian administrative court, Judgment of 07.12.2020, UPRS Judgment and Decision I U 1686/2020-126, as submitted by Slovenia with its observations on Admissibility, §266.

⁵⁵ Slovenian Supreme Court, VSRS Judgment I Up 23/2021, 09.04.2021, §§1-7.

⁵⁶ *Id.*, §28.

⁵⁷ *Id.*, §32

⁵⁸ ENNHRI, "Slovenian Ombudsperson's National Report on the situation of human rights of migrants at the borders" (Annex 22), 07.2021, pp.4-5.